

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.298 OF 2006

M/s.Galaxy Plastics (Bombay) Pvt.Ltd.,)
a Company registered under the India)
Companies Act, 1956 and having its)
registered office at 102/12, Mumbai)
Samachar Marg, Mumbai - 400 001.)..Petitioner.

V/s.

1. Union of India through the)
Secretary, Ministry of Finance,)
Department Revenue, North Block,)
New Delhi - 110 001.)
2. Customs, Excise & Service Tax)
Appellate Tribunal (CESTAT))
through its Registrar, Jai)
Centre, 34, P.D'Mello Road,)
Masjid Bunder (East),)
Mumbai - 400 009.)
3. Commissioner of Central Excise)
and Customs, Kendriya Uptad)
Shulak Bhavan Telangkeedi Road,)
Civil Lines, Post Box 81,)
Nagpur - 440 001.)
4. Deputy Commissioner of Customs)
and Central Excise, Amravati)
Division, Velagaon Road, Navsari)
Amravati - 444 604)..Respondents.

Mr.S.Sridharan, Advocate with Prakash Shah i/b. PDS
Legal for petitioner.

Mr.M.I.Sethna, senior advocate with A.M.Sethna for
respondents.

CORAM : Dr.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATED : 16TH FEBRUARY, 2006.

ORAL JUDGMENT (PER J.P.DEVADHAR, J.)

1. Heard learned counsel for the petitioner and the respondents.
2. Rule. Rule, returnable forthwith.
3. Mr.M.I.Sethna, learned senior advocate waives service for the respondents.
4. Heard finally by consent of learned counsel for the parties.
5. The dispute in the present petition relates to the classification of PVC media fills manufactured by the petitioner. According to the petitioner, the said goods are classifiable under Tariff Head 84.19 whereas the revenue contends that the same are classifiable under Tariff Head 39.20.
6. In the present case, the Commissioner of Central Excise, Nagpur by his order dated 25/1/95 upheld the contention of the petitioner and dropped the show cause notice issued against the petitioner. On an appeal filed by the revenue, the Tribunal by its order

dated 21st October, 2005 upheld the contention of the revenue that the goods are classifiable under 39.20. The contention of the petitioner before the Tribunal was that similar goods manufactured by their competitors at Delhi are classified under Tariff Head 84.19 of the Central Excise Tariff Act, 1985. While dealing with the said contention of the petitioner, the Tribunal held as follows :-

" Granting that the competitors was removing such goods made out of rigid PVC as Media Fills it is quite possible that he was doing so after fully assembling them into media fills. Blind belief cannot be termed as a bona fide belief. "

From the above finding, it is difficult to make out as to whether the products cleared at Delhi were different or not. Moreover, the Commissioner of Central Excise, Nagpur in his order dated 25/1/95 had held that the goods in question whether cleared in the assembled form or not are liable to be classified under Tariff Heading 84.19.

7. Thus, in the absence of a clear finding given by the Tribunal regarding the allegation of the petitioner that similar goods manufactured by their competitors at Delhi are classified under Tariff Heading 84.19, it will not be proper to hold that the goods manufactured by the petitioners are liable to be

classified under Tariff Heading 39.20. In this view of the matter, we deem it proper to set aside the order of the Tribunal dated 21/10/2005 and remand the matter back to the Tribunal to decide the appeal afresh.

8. We make it clear that we are not expressing any view as to whether the goods in question are liable to be classified under Tariff Heading 39.20 or 84.19 and it will be open to the Tribunal to decide the issue on its own merits.

9. Accordingly, the Petition is allowed and the impugned order passed by the Tribunal dated 21/10/2005 is quashed and set aside. The Tribunal is directed to decide the appeal filed by the revenue afresh and in accordance with law, as expeditiously as possible and in any event within a period of 6 weeks from today.

10. Contentions of both the parties are kept open.

11. Petition stands disposed of. Rule is made absolute in the above terms with no order as to costs.

(Dr . S. RADHAKRISHNAN, J.)

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(J. P. DEVADHAR, J.)